

EXHIBIT W



November 9, 2018

Also Sent By Email: ice-foia@dhs.gov

Office of the Principal Legal Advisor
Government Information Law Division
500 12th Street S.W. Stop 5900
Washington, D.C. 20536-5900

ATTN: Freedom of Information Act Appeal (Reference Number 2018-ICFO-45230)

To whom it may concern:

Please consider this Freedom of Information Act (FOIA) appeal pursuant to 5 U.S.C. § 552. On May 30, the Project On Government Oversight (POGO) submitted a FOIA request to Immigration & Customs Enforcement (ICE), requesting documents related to real-time facial recognition tools and Amazon facial recognition technology, “Rekognition” (Reference Number 2018-ICFO-45230). Specifically, we requested:

- Any communications between government officials and representatives of Amazon or AWS regarding facial recognition technology or Rekognition.
- Any procurement or contracting documents related to Rekognition or other real-time facial recognition tools, including but not limited to Requests For Proposals, invoices, and licensing agreements.
- Any marketing materials or other information describing real-time facial recognition tools such as Rekognition received by government officials, including but not limited to emails, advertisements, specification documents, and presentations.
- Any training or policy and procedures materials related to Rekognition or other real-time facial recognition tools.
- Any records or analysis assessing accuracy of real-time facial recognition tools such as those provided by Amazon or AWS, or plans to audit and review accuracy of real-time facial recognition tools provided by Amazon or AWS.

This FOIA request was relevant to all offices within ICE. On September 17, POGO received a response from ICE providing several documents of emails from an Amazon vendor to the Homeland Security Investigations office (HSI). According to the ICE FOIA office, this response was based on a search of ICE Office of Acquisitions (OAQ), ICE Homeland Security Investigations (HSI), and the ICE Office of the Chief Financial Officer (CFO). According to a September 27 follow-up email by the ICE FOIA office, “For 2018-ICFO-45230, a search of ERO [Enforcement and Removal Operations] was not conducted.”

FOIA requires agencies to do a search “reasonably calculated to uncover all relevant documents.”¹ The agency’s response and correspondence with POGO show it conducted an inadequate search required under the Freedom of Information Act.

¹ *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

There are two problems with ICE's response:

- 1) ***ICE should conduct a search of ERO in order to fulfill POGO's FOIA request.*** POGO's request was relevant to all ICE offices including ERO, and was in no way limited to OAQ, HSI, and CFO. Although many of our requests relate to procurement and contracting, they also include other items completely unrelated to acquisitions or finance that fall well within the purview of ERO, for example our request for certain training or policy and procedures materials. Additionally, communications with vendors and procurement or contracting documents that fall within the purview of POGO's FOIA request could also be discovered through a search of enforcement ICE's offices, as evidenced by the fact that responsive documents regarding discussion with Amazon about potential procurement of Rekognition software were obtained from the search of HSI. Similar or other relevant documents could be discovered through a search of ERO.
- 2) ***ICE should provide any responses to the communications included in its FOIA response.*** ICE included several emails from an Amazon vendor regarding its Rekognition software to HSI officials, but did not include any responses from the individuals receiving these correspondence, despite references to planning a daylong meeting and the Amazon vendors understanding of ICE's "ongoing efforts" related to facial recognition technology. All written correspondence from HSI officials to Amazon regarding these discussions should be provided in response to POGO's FOIA request. The personal emails and text messages are not exempt from FOIA when used for official business, even if the agency requires such messages to be forwarded to official accounts.² Similarly, ICE should conduct a search for any Amazon promotional materials on Rekognition in possession of HSI officials—in particular, the few emails ICE did provide are a basis for a more thorough search of records in possession of any HSI official who attended a meeting in McKinsey and Co.'s office in Redwood City, California on June 12, 2018.

For the reasons, POGO asks ICE to reconsider its decision not to search ERO pursuant to are original FOIA request, and to provide all responses from HSI to the correspondence by Amazon we received in response our FOIA request. Please contact us if this request requires further clarification. I can be reached at 202-347-1122 or via email at jlaperruque@pogo.org. Thank you for your prompt attention to this matter.

Sincerely,



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² *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016)